

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

UNITED STATES OF AMERICA, ET AL.,

CASE NO. C-1-02-107

Plaintiffs,

and

SIERRA CLUB, ET AL.,

Judge S. Arthur Spiegel

Intervenors,

v.

BOARD OF COUNTY COMMISSIONERS
OF HAMILTON COUNTY, OHIO, ET AL.

Defendants.

**DECLARATION OF JAMES B. HELMER, JR.
IN SUPPORT OF APPLICATION FOR ATTORNEYS FEES**

I, James B. Helmer, Jr., pursuant to 33 U.S.C. §1365(d), make this declaration in support of a determination of hourly rates of nationally prominent Greater Cincinnati attorneys practicing complex federal litigation and in support of the attorneys' fees requested in the Sierra Club and Marilyn Wall's Motion for Attorneys' Fees and Costs.

1. I am an attorney at law admitted to practice before the Supreme Court of Ohio, the United States Supreme Court, the District of Columbia Court of Appeals, the United States Court of Claims, the United States Court of Appeals for the Fifth, Sixth, and Eleventh Circuits, the United States District Courts for the Eastern District of Kentucky, Northern and Southern

Districts of Ohio, Eastern District of Texas, and Eastern District of Wisconsin. I have also been admitted *pro hac vice* in numerous other federal courts from Maine to California.

2. I graduated from the University of Cincinnati, College of Law in 1975. While at the College of Law, I served as the Editor-in Chief of the University of Cincinnati Law Review and was elected to the Order of the Coif.

3. I served as a law clerk to the Honorable Timothy S. Hogan, United States District Judge for the Southern District of Ohio from 1975 to 1977. Since the completion of my clerkship with Judge Hogan, I have been engaged in the private practice of law. My practice has been devoted exclusively to complex litigation matters.

4. There are more than 200 published opinions by jurists throughout the country in cases in which I was lead trial counsel. I have delivered over 100 lectures at professional seminars regarding civil litigation, trial practice, the False Claims Act, employment law, and attorneys' fees.

5. I am rated "AV" by the Martindale Hubbell Law Directory. I have held this rating since 1981. I have been listed in the last ten editions of *The Best Lawyers in America* (Woodward-White). On March 20, 2000, *The National Law Journal* selected me as one of the top ten litigators in the State of Ohio. In November 1995, I was designated as one of Cincinnati's top 56 attorneys by *Cincinnati Magazine*. I was selected as an Ohio Super Lawyer for 2004 by Law & Politics Magazine. I am the author of a treatise entitled *False Claims Act: Whistleblower Litigation*, (Matthew Bender 3d ed. 2002). I recently completed a 2003 supplement to this treatise. I have also authored several published articles on the same subject. I am also co-author of a chapter entitled "Attorneys' Fees in Employment Cases," in *Litigating Wrongful Discharge Claims*, §8.22 (Tobias ed. 1987), and of a book entitled

Representing the Terminated Employee in Ohio, Evaluating, Litigating and Settling State and Federal Claims (Anderson 2d ed. 1998).

6. I have substantial experience with respect to the cost of legal representation in Cincinnati and I am regularly consulted by other practitioners because of my experience in that area. I have been a member of the Cincinnati Bar Association's Fee Arbitration Committee for many years.

7. I represented the Legal Aid Society of Cincinnati in an attorneys fee request in *Crawley v. Hamilton County Jail*, C-1-82-543, 613, 629 (consolidated) (S.D. Ohio 1988) (Rubin, C.J.). I assisted class counsel in its application for an award of attorneys fees in *Drennan v. General Motors Corp.*, C-1-88-0515 (Rubin, C.J.), also a class action tried to a jury. I served as attorney for Minnesota Counsel with regard to their application for attorneys fees and expenses in *In Re: The Chubb Corporation Drought Insurance Litigation, James A. Lutmer v. The Chubb Group of Insurance Companies*, MDL No. 782, C-1-88-644 (S.D. Ohio 1990) (Rubin, C.J.). I testified as an expert on the subject of attorneys fees before Judge James Graham in a major civil rights class action, *P.O.E.R. v. City of Columbus*, C-2-78-394 (S.D. Ohio 1988). I also testified as an expert witness on attorney fees before the Indiana Utility Regulatory Commission in a class action involving utility rate refunds of approximately \$150 million.

8. I submitted affidavits as an expert on attorneys fees for other counsel in the following actions: *Howes v. Atkins*, No. 83-279 (E.D. Kentucky) (shareholder's derivative action); *Beechcrest Center, Inc. v. Hall*, C-1-91-792 (S.D. Ohio) (42 U.S.C. § 1983 action); *Betts v. Hamilton County Board of Retardation*, C-1-85-1108 (S.D. Ohio) (age discrimination action); *In Re Fernald Litigation*, C-1-85-0149 (S.D. Ohio) (class action); *Mosley v. Hairston*,

C-1-87-968 (S.D. Ohio) (42 U.S.C. § 1983 action); *James v. Frank*, C-1-85-1820 (S.D. Ohio) (handicap discrimination action); *Haithcock v. Frank*, C-3-89-291 (S.D. Ohio) (handicap discrimination action); *Stukey v. U.S. Air Force, et al.*, C-3-87-222 (S.D. Ohio) (gender discrimination action); *Kadinger v. Wayne Chemical, Inc.*, C-1-91-830 (S.D. Ohio) (age discrimination action), and *Jacobs v. Michael*, C-3-83-288 (S.D. Ohio) (police brutality case). I have also testified and/or submitted affidavits in support of attorney's fees in cases in which I was trial counsel on approximately two dozen occasions.

8. Eighteen years ago, in a securities-fraud class action caption *Basile v. Merrill Lynch, Fenner & Smith, Inc.*, 640 F. Supp. 697 (S.D. Ohio 1986), Judge S. Arthur Spiegel awarded attorneys fees to our firms which included an upward multiplier of 2.78, making our effective 1986 hourly rates \$389.20 for my time with commensurate rates for my associates.

9. More recently, I served as co-lead class trial counsel with D. David Altman in an environmental class action in Columbus, Ohio, which recovered \$22 million in 2002. *Booth v. Georgia Pacific Corp.*, No. 98CVC05-3535 (Franklin Cty. C.P.). In that action, the court approved hourly rates of \$420 for my time with commensurate rates for my partners and associates and co-counsel.

10. This year the District Court for the District of Columbia (in a Multidistrict False Claims Act case) and the District Court for the Southern District of Ohio (in a civil rights case) approved hourly rates of \$420 for my time with commensurate rates for my partners and associates.

11. As a result of the experience described above, I have gained substantial knowledge and expertise in connection with the preparation, trial, and settlement of complex litigation. I have extensive experience with fee applications and the various types of fee

arrangements in such litigation, both in Cincinnati, Ohio, and nationally. I regularly work to maintain my knowledge about the hourly rates charged by attorneys in the Cincinnati market and elsewhere in the county in complex and class action litigation, including interviewing partners at law firms to determine the hourly rates charged by them.

12. Attorneys D. David Altman and Albert J. Slap provided me with the following information about rates applied in this case:

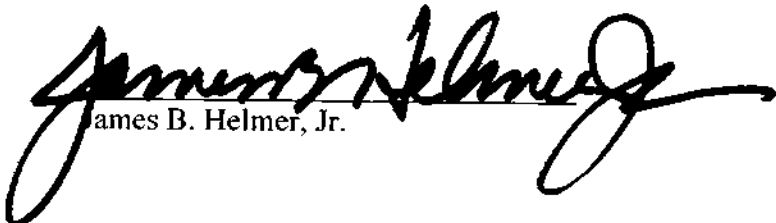
NAME	YEARS IN PRACTICE	HOURLY RATE APPLIED IN THIS CASE
Albert J. Slap, Esq.	30	\$300
D. David Altman, Esq. (D. David Altman Co., LPA)	30	\$390
Elizabeth Natter, Esq. (D. David Altman Co., LPA)	19	\$295
Amy Leonard, Esq. (D. David Altman Co., LPA)	16	\$295
Lance Himes, Esq. (D. David Altman Co., LPA)	5	\$200
Amy Beiersdorfer, Esq. (D. David Altman Co., LPA)	1	\$200
Brian Pasko, Esq. (D. David Altman Co., LPA)	1	\$150
Jennifer O'Donnell (Legal Assistant, D. David Altman Co., LPA)	1	\$75
Katie Danko (Paralegal, Sierra Club)	1 year, 5 months	\$90

13. Based on my expertise, the rates charged by Mr. Albert Slap, Esq., by the attorneys at the D. David Altman Co. LPA, and by the Sierra Club for Katie Danko are within the range of reasonable rates charged by other litigation specialists in this area.

14. I have known D. David Altman professionally for a number of years. In the *Booth* environmental class action discussed above and in a prior citizen environmental action prosecuted before this Court, *Duren v. Worthington Custom Plastics, Inc.*, No. C-1-93-550 (S.D. Ohio), I had the privilege of working with D. David Altman, Amy Leonard and Lance Himes. In my opinion, based upon my years of professional experience with these attorneys, the hourly rates requested for these counsel are appropriate and reasonable, if not below the market rate for attorneys of their experience, skill and knowledge in this specialized field of practice.

15. Based on my experience in litigating complex civil cases, including the environmental citizen actions described above, I am familiar with the substantial risk associated with the prosecution of such cases. The rates denominated above are not only reasonable but necessary to ensure that counsel of the caliber found in this action continue to fulfill the roll envisioned by Congress when it enacted the citizen suit statute, 33 U.S.C. § 1365. These counsel who successfully prosecuted this litigation and undertook the associated risk and burden should be compensated at the above-stated rates.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.


James B. Helmer, Jr.

Executed this 9th day of August, 2004.